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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1954

No. 407

MARKE E. CHAPMAN, ET ALS.,
Appellants,

versus

CITY OF SHREVEPORT,
Appellee.

Appeal from the Supreme Court of Louisiana.

MARKE E. CHAPMAN,
MRS. RUTH MUIRHEAD,
SAM JONES SMITH,
By their Attorneys,
ROBERT G. CHANDLER,
918 Commercial Building,
Shreveport, Louisiana,
OTIS W. BULLOCK,
506 Commercial Building,
Shreveport, Louisiana.

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Appeal from the Supreme Court of Louisiana.

To the Honorable the Supreme Court of the United States:

Petitioners Marke E. Chapman, Mrs. Ruth Muirhead and Sam Jones Smith, pursuant to Rule 15 of the Rules of this Court, respectfully show:

1.

The opinion rendered in the District Court below has not been yet officially reported (see Record, pp. 17 to 29, Inc.) and the decision of the Supreme Court of Louisiana is reported in *74 Southern (2d) at page 142, et seq.* (Southern Reporter Advance Sheets, September 16, 1954, pp. 142 to 147, Inc.); that copies thereof are annexed hereto pursuant to the provisions of sub-paragraph H of Rule 15 of the Rules of this Court.

2.

Appellants instituted this proceeding in the First Judicial District Court in the State of Louisiana seeking an injunction restraining the City Council of the City of Shreveport from inserting inorganic sodium fluoride in the public water supply of said City on the ground among others that said action would infringe the liberty guaranteed to appellants by the Fourteenth Amendment to the Constitution of the United States; that the State District Court granted the injunction and on appeal the Supreme Court of the State of Louisiana reversed the decision of the District Court, which decision is now sought to be reviewed.

3.

The decision of the Supreme Court of the State of Louisiana herein sought to be reviewed, was rendered on May 31, 1954 (Record, pp. 30 to 35, Inc.). A rehearing was timely applied for and the Supreme Court of Louisiana made its action final by denying the petition for a rehearing on July 2, 1954, (Record, p. 35); that on August 31, 1954 appellants filed their Notice of Appeal in the Supreme Court of Louisiana (Record, p. 63).

4.

That the Supreme Court of the United States has jurisdiction of this case by virtue of the provisions of Section 1257, Title 28, U.S.C.A. in that Resolution No. 262 of 1953 of the City of Shreveport (Record, p. 7) and the action proposed thereunder, if allowed to stand, would infringe the liberty of petitioners guaranteed to them by the Fourteenth Amendment to the Constitution of the United States.

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5.

That the following decisions of this Court support the jurisdiction in this cause: *Breard v. City of Alexandria*, 341 U. S. 622; *Terminiello v. City of Chicago*, 337 U. S. 1; *Jamison v. State of Texas*, 318 U. S. 413; *Jacobson v. Massachusetts*, 197 U. S. 11; *Allgeyer v. State of Louisiana*, 165 U. S. 578, and *Meyer v. State of Nebraska*, 262 U. S. 390.

6.

That this case involves the validity of Resolution No. 262 of 1953 of the City Council of the City of Shreveport, Louisiana, proposing to place inorganic sodium fluoride in the water supply of the City of Shreveport, the text of said resolution being as follows:

> "BE IT RESOLVED, That the City Council of the City of Shreveport, Louisiana, in legal and regular session convened, pursuant to the request of and adoption of a resolution by the following named organizations or societies, to-wit: The Council of Dental Health of the Louisiana State Dental Society, The Council of Dental Health of the Fourth District Dental Association, the Shreveport Medical Society and the City Board of Health of Shreveport, all of which organizations advocate, favor and approve and petition the City Council of the City of Shreveport to fluoridate the city water supply in accordance with the best plans now available.
>
> "THEREFORE, in consideration of these requests, the City Council hereby authorizes the Commissioner of Public Utilities to proceed with

calling for bids on the necessary equipment in accordance with specifications on file in the Department of Water and Sewerage Engineers office, and that the Secretary-Treasurer, J. T. Tanner, be authorized to advertise for same, returnable October 27, 1953, at ten o'clock A. M., at the City Hall; the City reserving the right to reject any and all bids." (Record, p. 7).

7.

The only question presented by this appeal is whether the placing of that drug or chemical known as inorganic fluoride in the community water supply of the City of Shreveport, Louisiana would constitute a violation of the rights guaranteed to the citizens of said City by the Fourteenth Amendment to the United States Constitution, the purpose of the insertion of said drug being for the purpose of reducing incidence of dental caries which is a noncontagious and noninfectious disease.

8.

The case has been heretofore stated in this statement, but the facts material to the consideration of the question presented show that while the preponderance of the evidence indicates the proposed action sought to be prohibited would reduce the incidence of dental caries in children that no clinical tests have been made tending to show its effect on the aged, adult and ill, and that, the matter is still in an experimental stage. (See Report of Select Committee, 82nd Congress, Second Session, Record, pp. 3 to 12, Inc.).

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Appellants claimed the protection of the Fourteenth Amendment in their petition in the State District Court (Record, p. 4), argued the question both orally and in brief in the Louisiana Supreme Court, contending that the ruling of this Court in *Jacobson v. Massachusetts*, 197 U. S. 11, was authority for the proposition that personal liberty of citizens might not be infringed except under pressure of great dangers caused by contagious or infectious diseases, dental caries not being a disease falling in that category. That the Supreme Court of Louisiana denied appellants' claim of protection under the Fourteenth Amendment in the following language:

> "There is no merit in appellees' argument that, if the city charter grants to the city council of Shreveport authority to fluoridate its water supply, such action to that extent is a violation of the Fourteenth Amendment of the United States Constitution. The Fourteenth Amendment does not deprive a state or its subdivisions of the right to preserve order or to protect the health of the people under its police power, and in the exercise of its power the legislative branch may interfere with and impair the individual liberty of the citizens in a manner and to an extent reasonably necessary for the public interest, and the courts will not interfere except where the measures invade fundamental rights or are arbitrary, oppressive, or unreasonable. This is not a proper case for judicial interference." (Record, pp. 34 to 35).

9.

Petitioners show that the question presented in this case is substantial because inorganic sodium fluoride is a drug or chemical which might have harmful and deleterious effects upon the citizenship in general, particularly in view of the fact that no clinical tests have been made to determine the effect of said drug upon the aged, adult and ill portions of the population, or upon pregnant women, and for the further reason that eminent and respectable authorities among persons qualified to have an opinion, throughout the United States, feel that the advisability of fluoridation of communal water supplies is still in an experimental stage; that under the circumstances the health and welfare of the entire population of the United States are involved.

Wherefore, petitioners pray that this statement be received and deemed sufficient.

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MRS. RUTH MUIRHEAD,
SAM JONES SMITH,
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APPENDIX A.

Marke E. Chapman, et al.	No. 116,282
v.	First District Court
City of Shreveport	Caddo Parish, Louisiana

OPINION

This case is now before the Court for decision following trial of petitioners' application for a preliminary writ of injunction to prevent the fluoridation of the publicly owned and operated City water supply, which is at present fluorine-free, pursuant to the decision of the City Council so to do. As the first step to effectuate its decision, the Council adopted a resolution authorizing the Commissioner of Public Utilities to proceed with calling for bids for the purchase of the necessary equipment. This suit followed.

Petitioners are residents, citizens, ad valorem taxpayers of the city, and purchasers of water from the City for their use and the use of their families. Petitioners contend that the proposed fluoridation of the public water supply and the expenditure of public funds for such purpose are illegal, null and void; whereas the City asserts the legality and validity of the proposed action.

On the trial of the application the evidence, for the most part, was, by agreement of counsel, adduced in the form of affidavits and statements of witnesses. In addition, the Court admitted, over objection of defendant's counsel, transcript of "Hearings before the House Select Committee to Investigate the Use of Chemicals in Foods and Cosmetics, House of Representatives, 82nd Congress,

Held in January and February, 1952." Included in this evidence are the scientific opinions and reports of doctors of medicine, dentists, chemists, biochemists, health officials, research engineers, scientists, etc., from this locality and from many other parts of the United States. The result is a voluminous record dealing with involved scientific matters upon which the experts themselves are not in unanimity of view. To all this we have given prolonged consideration and study to the end that we might obtain an understanding of the essential facts necessary to the proper application of the legal principles involved in this controversy.

What is fluoridation? It is the impregnation of the City water supply with fluorine ions, accomplished by the mechanical addition to the water of a suitable and soluble fluorine compound, called a fluoride. Sodium fluoride is the one whose use is contemplated by the City. This is necessary because the element fluorine, when isolated and not in combination, is a gas, highly toxic and corrosive, and reacts violently with water, but when the fluorine exists as ions (as it does in its salts) it is water soluble. These salts, or fluorides (ions of fluorine combined with ions of metals of some kind) occur in nature in varying amounts (almost always in low concentrations). In many areas of the United States, including areas in Colorado, Texas, Arkansas, Ohio, Illinois, and others, the natural water supplies contain varying concentrations of fluoride. The evidence establishes that the fluorine ion is contained in many of the foods which are common to the American diet, notably the vegetables and proteins. The evidence shows that the artificial fluoridation can be effected by

apparatus designed and perfected so as to accomplish with mechanical accuracy the concentration desired.

What is the purpose of artificial fluoridation? We may begin to answer this question by observing what fluoridation is not intended to accomplish. Fluoridation has nothing to do with and bears no relation to the purity, sanitation, or potability of the water. Chlorination is the universally accepted method of sterilization. The reason chlorine is the universally accepted agency for ridding water supplies of impurities, bacteria and other organisms deleterious to health is that it is both effective and safe. Its effectiveness has been demonstrated from long experience and it is accepted by unanimity of scientific opinion to be efficiently destructive of water-borne bacteria and deleterious organisms. It is safe because it accomplishes its purpose in concentrations that are not toxic and because of its fugitive characteristic and tendency to escape and separate from the water after its work is done. Thus it is pointed out in the evidence that the farther away from the point of mixing the water is the less and less the chlorine concentration becomes, so that usually by the time it reaches the consumer's water faucet its presence is not observed. This tendency to escape and separate is accelerated with temperature rise. To the contrary, fluorine is not and cannot be effectively used for the purpose of sterilizing the water, because the amount of fluorine necessary to be added to water for that purpose would result in a highly toxic concentration. Moreover, fluorine does not possess the fugitive characteristic of chlorine. It remains in the water, and a rise in temperature, accelerating evaporation, leaves the fluorine unaffected and increases the

concentration. All the evidence on this point supports the statement from the affidavit of A. A. Hirsch, City Chemist and Water Purification Superintendent for the City of Shreveport, that "Fluorine in any form, either elemental or combined, to affiant's knowledge, has never yet been proposed or contemplated as a sterilizing agent for public water supplies."

The admitted aim of fluoridation is to reduce the number of cases of dental caries, or tooth decay, among the children of the community of the age of approximately 12 years and under, the age span during which dentitions, deciduous and permanent, take place.

At this point some historical information concerning fluoridation is enlightening. Some years ago in certain areas of the United States where the public water supply naturally contained the element fluorine, it was observed that the native population and those who had resided in the areas over long periods of time manifested a phenomenon of "mottling" of the enamel of their teeth. By a process of elimination fluorine was convicted as the offender and this condition received the name "fluorosis" in acknowledgment of its parentage. This mottling was not removable and occurred in various degrees characterized by the scientists as ranging between mild and extreme, producing defects ranging from "cosmetic" in the mild to "functional" in the extreme cases. This condition of fluorosis was observed to be worse in areas having excessive concentration of fluorine in the particular water supply. Resultant studies indicated that these toxic effects of fluorine did not occur, except in minimal amounts, where the fluorine concentration did not exceed approxi-

mately 1 PPM, that is, one part fluorine per million parts of water.

Paradoxically, it was observed by the students of this problem that in these same areas, while the mottling, or fluorosis, was observed, there was less dental caries, or tooth decay, as compared to areas where the public water supplies were fluorine-free, particularly among children under the age of approximately twelve. This age group, approximately 10 or 12% of the population, was used in the studies because of their availability and accessibility in the schools. As a result, the theory that controlled fluoridation, that is, the concentration of approximately 1 PPM, was effective in reducing the incidence of dental caries, or tooth decay, among children during the periods of dentition, both deciduous and permanent teeth, while avoiding any toxic effects otherwise, has received widespread acceptance among many scientific observers.

The accumulated evidence does indicate that fluorine in public water supplies reduces the incidence of tooth decay. The real difference of opinion among the experts is whether sufficient evidence has been obtained to prove that the fluorine ion in public water supplies, which the entire population is required to ingest, particularly when artificially or mechanically added, may not have a cumulative toxic effect, particularly upon the aged, the ill, and those suffering from chronic physical ailments, etc. Test programs in laboratory and field have been under way and are still in progress on this question. The proponents of fluoridation assert that there is already sufficient evidence to demonstrate that controlled fluoridation is not harmful in any respect to the rest of the population. They point

to population surveys which have been made in the areas where naturally fluoridated water has been ingested for many years. These surveys, they say, reveal no greater incidence of the other diseases common to humanity in those areas than in the areas where water is fluorine-free. The opponents say these surveys are as yet inconclusive and unacceptable. Let the scientists and the lapse of time resolve the question. We are not qualified to decide that controversy. Fortunately, it is not necessary to a decision in this case. We only refer to it here because we think it is relevant to what we conceive to be the basic issue of fact as well as law in the instant suit.

The evidence establishes that fluoridation will not cure dental caries nor prevent it entirely, even in the young age group which it is designed particularly to serve. Dental caries, or tooth decay, exists in the naturally fluoridated areas as well as the areas which have artificially fluoridated water supplies, even among the children below twelve years of age. Fluoridation, therefore, is not a specific, such as smallpox vaccine is for smallpox. All that is claimed for fluoridation is that there will be less dental caries with fluoridated water than with water that is fluorine-free.

What is dental caries, or tooth decay? It is classified by the scientists as a disease. It is widespread and prevalent, not only in most of the United States, but also in the area of Shreveport. Its cause is as yet unknown. The evidence indicates that the most generally accepted scientific theory on the subject is that tooth decay is the result of the enzymatic action of one or more bacterial organisms in or around the teeth. There is no known cure.

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The only available treatment is the removal of the affected area followed by filling with appropriate material. With these facts in mind, the next question naturally arises as to how the placing of fluorine in water is thought to combat tooth decay. In other words, what is the process of its action following ingestion? And this is important, we think, in a proper determination of the legal issue in this case. We have noted two theories advanced out of the mass of scientific evidence in this case. One is that, as a result of drinking fluoridated water, some of the fluorine ions are deposited or stored in the dental tissues or teeth and that they serve as inhibitors of the destructive actions of the bacteria which are thought to cause the decay of the teeth. The other theory is that the drinking of fluoridated water "changes the flora of the mouth," which we suppose means that the fluorine ion in the water that is drunk perhaps serves to destroy in the mouth some of the bacteria which, if left uninhibited, would eventually attack the teeth. Under either theory it is our appreciation of the evidence that the purpose of fluoridation is to accomplish the application of the fluorine ion to the teeth and the dental area by external contact in the mouth or as a result of body metabolism and that the drinking water is merely the vehicle by which that is accomplished. In other words, it is either the direct or indirect application to the teeth and the dental area of the fluorine ion, or perhaps both. Indeed, a number of the scientists whose opinions appear in the record expressed the opinion that the direct application (they call it topical application) of the fluorine ion to the teeth and dental tissues accomplishes the same result as is claimed for fluoridated drinking water, except that they do not claim quite as high a per-

centage of reduction in the incidence of tooth decay as is claimed by the advocates of fluoridation. There is evidence in the record that there are other elements besides fluorine which have demonstrated a capacity to combat tooth decay similar to that of fluorine, and without any toxic effect otherwise. Again, these are conflicting theories which we are not called upon here to resolve.

The point is that these scientific facts convince us that the process of fluoridating a public water supply is in actuality a method of treatment by fluoridating the dental areas and tissues of the individual who drinks the water. The plaintiffs in this case call this mass medication. Defendant's counsel deplores the use of this terminology and say that it is in no sense medication. But we think defendant's counsel give too narrow an interpretation to the words. They would restrict the meaning of medication to a therapeutic or curative process; and, since they correctly point out that fluoridation is not designed to and cannot cure the disease of dental caries, it cannot be medication. But medication, in lay understanding, includes prophylaxis or preventive measures, when applied to the individual. Even dietary regimes prescribed by the doctor of medicine is, in this sense, medication. Considering the end results that are sought, we cannot escape the conclusion that it is a form of medication or at least a scientific treatment or a sort of hydro-therapy, by way of ingesting these mineralized waters, of and for the children of the community under twelve years of age. And the entire balance of the population will be forced to take it, whether they want it or not, unless, as suggested in one argument, they obtain and use some other kind of water.

Before leaving the evidence pertaining to the nature and purpose of the fluoridation process we observe in the opinions of some of the experts statements that fluoridation is merely a process of adjusting the mineral content of the water so as to supply and relieve a mineral deficiency. The implication here is a theory that the absence of fluorine from drinking water is a nutritional deficiency. But in our opinion the evidence in the case falls far short of demonstrating that fluorine is an indispensable element in the growth and development of dental tissue.

Another aspect of the disease of dental caries which is established by the scientific evidence is that it is non-contagious and non-communicable. In short, it cannot be transmitted from one person to another. No person or segment of the population having decayed teeth can, on that count, have any effect upon the dental health of the general public or of any other member or segment thereof.

In the light of this review of the facts, let us turn to the legal aspects of this case. First, let it be noted that this is a case of first impression in Louisiana. No appellate court nor, as far as we know or have been informed, any other court in this state, has ever been called upon to consider this specific question. We, therefore, have no binding precedent to guide us here, but must rely upon our own judgment of the issue.

The basic and, to our mind, the decisive issue in this case, is plaintiffs' contention that the City Council has no delegated authority to fluoridate the City water supply. It is unnecessary to lengthen this opinion by citation of authorities for the proposition that a municipal

government, being the creature and a subdivision of the State, derives its just and lawful powers from the State, and may exercise its delegated powers only for the purposes of the delegation. Such delegation may be either express or implied from the language and the nature of the delegation. We have already pointed out orally at an early stage of this litigation that the City clearly has been delegated the express power to acquire, maintain and operate a City water supply and the plenary power to take all necessary action to protect the same from pollution and damage. We quote subsections (m) and (u) of Section 2.03, Chapter 2, of the City's Charter:

> "(m) To acquire amicably or by expropriation, construct, own, maintain and operate, within and without the city, water works, gas plants and electric plants, with the pipe and transmission lines incident thereto, for the purpose of supplying water, gas and electricity within and without the city, to charge and collect compensation therefor, and to provide penalties for the unauthorized use thereof, provided that no such plant shall be acquired except with the approval of a majority of the electors of the city voting thereon at an election called for the purpose, and provided that no water shall be sold to any other municipality except in accordance with the general laws of the state."

> "(u) To make all necessary regulations to protect the water supply of the city from pollution and other damage, and to exercise full and unlimited police power over the bed and waters of Cross Lake and for a distance of five thousand feet from the

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> meander contour line which extends to the one hundred and seventy-two foot mean gulf level line as well as over the streams and tributaries of said lake for the same distance, and to pass any and all rules, regulations and ordinances deemed to be necessary for these purposes; and the city shall have the right and authority through its board of health, public safety department, public utilities department or otherwise, to inspect all of said property and the darinage area of said Cross Lake, and to enforce its ordinances and regulations by fine or imprisonment through the proper courts of the state."

In our mind it is not reasonable to hold that these specific delegations include by implication the authority to fluoridate the City water supply to combat dental caries in a segment of the population, for we observe no reasonable relation between the two. Indeed, the very language expresses the purpose of the delegations to be "for the purpose of supplying water within and without the city" and "to protect the water supply of the city from pollution and other damage." We know of no other specific provisions, nor have we been referred to any, contained in any other statute or constitutional provision of this state, conferring any more specific authority than that contained in the above-quoted sections.

But defendant contends that, under its police power to protect and promote the public health, it acted within its authority in taking the proposed action. It cites the sweeping provisions of Section 2.01 of its Charter, to-wit:

"Section 2.01. General Powers. The City of Shreveport shall have and may exercise all the powers, rights, privileges and immunities which are now or may hereafter be or could be conferred upon cities of its population class by the constitution and general laws of the state; all powers, rights, privileges and immunities heretofore conferred on said city by any special act and not inconsistent with this plan of government; and all other powers pertinent to the government of a city the exercise of which is not expressly prohibited by the constitution of the state and which, in the opinion of the council, are necessary or desirable to promote the general welfare of the city and the safety, health, peace, good order, comfort, convenience and morals of its inhabitants, as fully and completely as though such powers were specifically enumerated in this plan of government, and no enumeration of particular powers in this plan of government shall be taken to be exclusive but shall be held to be in addition to this general grant of power."

This impressive language is no more than the usual delegation of the police power and is to be so interpreted. To hold otherwise would be to introduce a new concept that the police power of government is unlimited. It is not to be considered that the redactors of this charter provision or the people who adopted it had any such purpose or intent. It would require libraries to contain the works of text writers and judges dealing with police power. We shall refrain from adding another volume for, after all,

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the principle is not the subject of controversy and may be tersely stated.

Concerning the exercise of the police power in the domain of the public health, it is settled law that a municipality through its governing authority may take any action it may determine to be necessary and expedient, provided (1) the object of such action bears a reasonable relation to the public health, and provided (2) the means employed be not arbitrary, unreasonable, oppressive, or violative of the constitutional guaranties of the citizens. If this test be met the municipality's action is not subject to the control of the courts. Whether the means employed be good or bad, wise or unwise, is not the concern of the judiciary. But it is the duty of the courts to decide, when such governmental action is challenged, whether the purpose and object of such action bear a reasonable relation to the public health and whether the method resorted to to accomplish the object be arbitrary, unreasonable, or invasive of constitutional guaranties. In so deciding the courts look beyond the declared objective to ascertain whether it is in fact what the governing body has declared it to be and the court must be governed by the facts of each particular case. This is not a curtailment by the courts of the just powers of another branch of the government, but is merely a judicial determination of whether or not the governmental agency has strayed beyond the boundaries of the domain wherein it may, without judicial restraint, exercise its just powers.

We need only consider the first condition precedent to the valid exercise of police power indicated above. Under the facts of this case as we understand and have stated

them, it is our opinion that fluoridating the City water supply bears no reasonable relation to the public health. It is worthy of note that the only specific reference to disease in the City Charter (Section 2.04 (u) of Chapter 2) is contained in the following language:

> "To make regulations not in conflict with the laws of the state, for the maintenance of cleanliness and sanitary conditions within the city, and to prevent the introduction and spread of contagious diseases; . . ."

Certainly it is not here suggested that the foregoing language delineates the boundaries of the domain of public health, for many subject matters not comprended in the named categories have been held by the courts to be within that domain and, therefore, subject to regulation and control by the valid exercise of the police power. But all such are and have been "public" in their import, rather than being matters of personal health and hygiene.

We advert to the scientific evidence concerning the nature and cause of dental caries, or tooth decay. It is not contagious and cannot be transmitted from one person to another. No person or segment of the population having that condition can, on that account, have any adverse effect on the health, dental or otherwise, of the general public or any member or segment thereof. We repeat, in our opinion this is not a matter of the public health. It is strictly within the realm of individual and personal dental health and hygiene within which each person should be free to choose his course for himself and those for whom he is responsible in the family relation. To this field the just powers of the government do not extend.

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The suggestion that the fluoridation of the City water supply can be legally justified as a measure bearing a reasonable relation to the general welfare is even more tenuous than the contention that it is within the domain of the public health. For the reasons we have heretofore stated. We think this contention is without merit.

The views we have expressed make it unnecessary to discuss or pass upon the other questions raised.

Accordingly, there will be judgment ordering a preliminary writ of injunction to issue herein, prohibiting the defendant from proceeding further to fluoridate the City water supply.

/S/ James U. Galloway
J u d g e.

APPENDIX B.

MONDAY MAY 31, 1954

Supreme Court of Louisiana

No. 41,717

Marke E. Chapman et al.

versus

City of Shreveport

Appeal from the First Judicial District Court, Parish of Caddo; the Honorable James U. Galloway, Judge.

HAWTHORNE, J.

This is an appeal by the City of Shreveport from a judgment enjoining it from fluoridating the municipal water supply. The City of Shreveport owns and operates its own municipal waterworks plant and other facilities for the sale and distribution of water for consumption and other uses of the inhabitants of that city. On October 16, 1953, the Shreveport city council adopted a resolution authorizing the commissioner of public utilities to proceed with the advertising and calling for bids for the necessary equipment to fluoridate the city water supply in accordance with the best plans now available and to receive these bids on or before October 27. The initial amount which the city proposes to spend in order to fluoridate the water supply is shown by the record to be in excess of $10,000.00 and the annual operating expense approximately $21,000.00.

The plaintiffs, as residents, citizens, taxpayers, and purchasers of water from the city, instituted this suit

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seeking a preliminary writ of injunction to prevent the proposed fluoridation of the public water supply and the expenditure of these public funds for such purpose. After trial in the lower court a preliminary injunction issued enjoining, restraining, and prohibiting the City of Shreveport from proceeding further to fluoridate the water supply of that city. From that judgment the city was granted a devolutive appeal to this court.

As we appreciate and understand the trial judge's written opinion, he granted a preliminary injunction in the instant case because in his opinion the charter of the City of Shreveport delegated no authority, express or implied, to the city to fluoridate its water supply, and the city did not have this power or right under its police power in the domain of public health. In the course of his reasons for judgment he recognized the well settled principle of law that a municipal authority may take any action it may determine to be necessary and expedient under its police power in the domain of public health, provided the purpose and object of such action bears a reasonable relation to the public health and provided the means employed is not arbitrary, unreasonable, oppressive, or violative of the constitutional guarantees of the citizens. He concluded, however, that under the facts of the instant case the fluoridation of the city water supply bears no reasonable relation to the public health or that it is not a matter of public health but is strictly within the realm of private dental health and hygiene, in which each person should be free to choose his course for himself and those for whom he is responsible in the family relationship.

For the primary *purpose of reducing tooth decay in children 12 years of age and under*, the City of Shreveport proposes to add to the water furnished by it for the use and consumption of its citizens sodium fluoride in the proportion of one part per million. In furtherance of this purpose the resolution authorizing the calling for bids for the necessary equipment for fluoridation was adopted by the city council at the request of the Council of Dental Health of the Louisiana State Dental Society, the Council of Dental Health of the Fourth District Dental Association, the Shreveport Medical Society, and the City Board of Health of Shreveport, all of which advocated and approved the fluoridation of the city's water supply.

The relationship between the fluoride content of water supplies and dental caries has been the subject for some years of extensive scientific study, research, and experiments, and as a result of this research the court in the instant case has the benefit of facts ascertained, studies made, and opinions formed by many leading and prominent American dentists, physicians, surgeons, scientists, health and dental associations and organizations, whose statements have been filed in evidence, on the advisability of the fluoridation of water for human consumption. In sum, these statements disclose the following pertinent facts:

Dental caries, or tooth decay, is a pandemic disease, affecting most of our population both adults and children. Fluorides in varying proportions from less than one to 14 parts per million exist naturally in the water supplies of many regions of this country, and it has been demonstrated by studies made in many sections throughout the United States that in communities where the water supply con-

tains no fluoride tooth decay among children is approximately three times greater than it is among children living in communities where the water supply contains one part of fluoride per million parts of water or more. In these studies other factors of diet and other mineral components of water were considered, but it was found that only the fluoride content of the water consumed bore direct relationship to consistent protection from dental caries. This preventive effect of fluorides on tooth decay was found to be most efficient during the period when the dentine and enamel of the permanent dentition are being formed, which is the period from birth to about the twelfth year, but it was shown that the protection afforded against dental caries in this formative period continues well into adult life, even into the middle 30's and 40's. Studies were made of the effect on tooth decay when fluorides were artificially added to municipal water supplies, and it was found that the fluorides artificially added had the same preventive effect on caries as did the fluorides naturally existing in water.

By November 6, 1953, more than 840 communities, with a total population of 15,578,300, were using water supplies which had been artificially fluoridated in concentrations from 0.7 to 1.5 parts per million. By 1951, after five or six years of the fluoridation of the water supplies in certain cities, studies and examinations were made of the teeth of school children in these cities (and also, for comparison, of those of the children in cities where the water supply contained no fluorides), and the finding reported was that there has been a reduction of from 50 per cent to 65 per cent of decay in permanent teeth in children in the cities where fluorides had been added

artificially to the water. As a result of these studies and experiments the United States Public Health Service, the National Institute of Health, the American Dental Association, and numerous other national organizations recommended the fluoridation of municipal water supplies as a desirable and effective health measure.

The City of Shreveport proposes to use the recommended concentration of one part per million, and this concentration has not been reported to produce any adverse physiological effect. Vital statistics and reports of physicians from communities where water containing one part per million or over is consumed have shown uniformly no undesirable effects on birth or death rates or on invalids, elderly or sick individuals, or any other persons.

The addition of fluorides to the water supply does not affect the color, odor, or taste of the water. The same kind of procedure which has long been used to feed chlorine and other chemicals into the water supply is used to introduce fluorides into the water, and there is no question that fluorides can thus be added to the water without danger of physical over-feeding or any mechanical breakdown which would produce a toxic effect.

The charter of the City of Shreveport, which was written under the authority of a 1948 amendment to Article 14, Section 37, of the Constitution and approved by a vote of the citizens of that community in 1950, confers upon that city the power to adopt such measures as are necessary in the opinion of the council to promote the general welfare of the inhabitants of that city in Section 2.01 of the charter:

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"General Powers. The City of Shreveport shall have and may exercise all the powers, rights, and privileges and immunities which are now or may hereafter be or could be conferred upon either of its population class by the constitution and general laws of the state; all powers, rights, privileges and immunities heretofore conferred on said city by any special act and not inconsistent with this plan of government; and all other powers pertinent to the government of the city the exercise of which is not expressly prohibited by the constitution of the state and which, in the opinion of the council, are necesary or desirable to *promote the general welfare of the city* and the safety, *health*, peace, good order, comfort, convenience and morals of its inhabitants, as fully and completely as though such powers were specifically enumerated in this plan of government, and no enumeration of particular powers in this plan of government shall be taken to be exclusive but shall be held to be in addition to this general grant of power." (Italics ours)

Accordingly, if fluoridation of the water supply bears any reasonable relation to the public health, it can be undertaken by the city under the express provisions of this action of its charter. Moreover, it is well settled that courts will not interfere with the legislative authority in the exercise of its police power unless it is plain and palpable that such action has no real or substantive relation to the public health or safety or general welfare. City of Shreveport v. Conrad, 212 La. 737, 33 So. (2d) 503; City of Shreveport v. Bayse et al, 166 La. 689, 117 So. 775. There also exists a presumption that an ordinance adopted under the police power of the state is valid, and the burden

of proving the contrary is on him who asserts the invalidity or nullity. City of New Orleans v. Beck, 139 La. 595, 71 So. 883; Ward et al v. Leche et al, 189 La. 113, 179 So. 52; State v. Saia, 212 La. 868, 33 So. (2d) 665; State v. Rones, 223 La. 839, 67 So. (2d) 99.

Although the immediate purpose of the proposed fluoridation is to retard and decrease the disease of dental caries in young children, the protection thus given will continue well into adult life. Not only will the proposed fluoridation retard and reduce this disease in the generation of children presently in Shreveport, but its effect will continue into their adult life, and consequently the proposed measure will ultimately be beneficial to all the residents of the city.

The health of the children of a community is of vital interest and of great importance to all the inhabitants of the community. Their health and physical well-being is of great concern to all the people, and any legislation to retard or reduce disease in their midst cannot and should not be opposed on the ground that it has no reasonable relation to the general health and welfare. Children of today are adult citizens of tomorrow, upon whose shoulders will fall the responsibilities and duties of maintaining our government and society. Any legislation, therefore, which will better equip them, by retarding or reducing the prevalance of disease, is of great importance and beneficial to all citizens. In our opinion the legislation does bear a reasonable relation to public health.

The appellees insist, and the district judge concluded, that fluoridation of the water to prevent tooth

decay is not a matter of public health, but a matter of private health and hygiene. The evidence in this record refutes overwhelmingly this conclusion. Dental caries is one of the most serious health problems in the City of Shreveport, and in the nation as well. The fact that it is not a communicable disease and one that can cause an epidemic does not detract from its seriousness as affecting the health and well-being of the community. The plan for fluoridation, therefore, bears a reasonable relation to the general welfare and the general health of the community, and is a valid exercise of the power conferred by Section 2.01 of the charter if it is not arbitrary or unreasonable.

The appellees contend that fluoridation of the water supply is arbitrary and unreasonable because it *may* cause serious ill effects to the adult, aged, and ill; that it is arbitrary to fluoridate the water until clinical tests have proved that these serious effects will not result. The appellees have failed completely to prove that fluoridation would be harmful to the aged and ill.

There is expert opinion of respectable medical authority that fluorides added to water will have no more harmful effect than fluorides naturally appearing in water, and that in those places where fluorides naturally appear no ill effects have been experienced by the aged or ill of the population. In those placed where tests have been conducted no ill effects have been shown. It cannot be said, then, that the City of Shreveport is acting arbitrarily from this point of view.

Appellees contend that it is arbitrary and unreasonable to compel a person to submit to the taking of pre-

ventive medicine except for the purpose of controlling the spread of contagious or infectious diseases. Their argument is not entirely appropriate to the instant case. In the first place there is no direct complusion on anyone to drink the water. The compulsion at most is an indirect one, but it cannot be questioned, of course, that the fluoridation is undertaken with the view that the citizens or a large majority of them will receive its benefits by drinking the public water. The witnesses from the dental profession considered that the addition of fluoride to the water was not medicating it in the generally accepted sense, but was adding to it one of the mineral properties found naturally in water in some sections of the country.

Appellees next argue that it is unreasonable to fluoridate the water when it will reduce the incidence of disease only among a limited class. A health measure is not necessarily arbitrary because it affects primarily one class. It may, even so, be in the interest of the public generally. Ultimately, of course, the fluoridation will benefit the whole population because the retarding of decay extends into adult life of the child who has had the benefit of water containing fluorides. It has long been recognized that a police measure is not objectionable because it does not extend to all classes. In Zucht v. King et al, 260 U. S. 174, 43 S. Ct. 24, 67 L. Ed. 194, it was said:

"* * * A long line of decisions by this court * * * (has) settled that in the exercise of the police power reasonable classification may be freely applied and that regulation is not violative of the equal protection clause merely because it is not all-embracing. * * *" See also West Coast Hotel Co. v. Parrish et al, 300 U.S. 379, 57 S. Ct. 578, 81

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L. Ed. 703; Sturges & Barr Manufacturing Company v. Beauchamp, 231 U.S. 320, 34 S. Ct. 60, 58 L. Ed. 245.

There is no merit in appellees' argument that, if the city charter grants to the city council of Shreveport authority to fluoridate its water supply, such action to that extent is a violation of the Fourteenth Amendment of the United States Constitution. The Fourteenth Amendment does not deprive a state or its subdivisions of the right to preserve order or to protect the health of the people under its police power, and in the exercise of its power the legislative branch may interfere with and impair the individual liberty of the citizens in a manner and to an extent reasonably necessary for the public interest, and the courts will not interfere except where the measures invade fundamental rights or are arbitrary, oppressive, or unreasonable. This is not a proper case for judicial interference. See Cooley on Constitutional Law (4th ed.), p. 289; 2 Cooley's Constitutional Limitations (8th ed.), pp. 1223 et seq.; Jacobson v. Massachusetts, 197 U.S. 11, 25 S. Ct. 358, 49 L. Ed. 643; State v. McCormick, 142 La. 580, 77 So. 288.

For the reasons assigned, the judgment of the district court is reversed and set aside, and plaintiffs' suit is dismissed at their costs.